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owned the fee in the servient estate, he was only tenant of the dominant estate, and in his use of the road he was exercising that right as tenant of Mrs. Rice and not as owner of his own land. *Rogers* v. *Flick* (Ky. 1911) 139 S.W. 1098.

An easement may be extinguished by union of ownership of the dominant and servient estates in the same person. 1 REEVES REAL PROP., p. 264; WASHBURN REAL PROP., p. 639; *Robb* v. *Hannah's Ex'rs.* 12 Ky. L. Rep. 36, 14 S. W. 360; *Morgan* v. *Meuth,* 60 Mich. 238, 27 N. W. 509; *Denton* v. *Leddell,* 23 N. J. Eq. 64, 66; *Dority* v. *Dunning,* 78 Me. 381, 6 Atl. 6; *Zerbey* v. *Allan,* 215 Pa. St. 383, 64 Atl. 587; *Howell* v. *Estes,* 71 Tex. 690, 12 S. W. 62. This would be true to a limited extent if the possession only of the two estates were united in the same person. So long as possession of both estates continues in the same person the easement is suspended merely and revives upon the expiration of the term for years or for life, as the case may be. 1 REEVES REAL PROP., p. 264; WASHBURN EAS. & SERV., p. 639; *Pearce* v. *McClenaghan,* 5 Rich. L. (S. C.) 178, 55 Am. Dec. 710; *Darity* v. *Dunning, supra; In re Bull,* 15 R. I. 534, 10 Atl. 484. Assuming that an easement was acquired by the user of Mrs. Rice and her tenants, the principal case is in accord with the authorities cited; but can Clore's user of his own land be computed in making the statutory period necessary to acquire such easement by adverse possession? No man can acquire an easement against himself. WASHBURN EAS. & SERV., p. 639; REEVES REAL PROP., § 194, p. 263; *Denton* v. *Teddell, supra; Plimpton* v. *Converse,* 42 Vt. 716. To constitute adverse enjoyment so to give the adverse party an easement in another's land it must be while there is someone to whom such user is adverse. 2 WASHBURN REAL PROP., Ed. 5, 339. Such user must be uninterrupted in the land of another by acquiescence of the owner for the requisite period. 2 WASHBURN REAL PROP., Ed. 5, 337. It must be hostile to the title of the true owner. *Ward* v. *Cochran,* 150 U. S. 597; *Jackson* v. *Berner,* 48 Ill. 203; *French* v. *Pearce,* 8 Conn. 439, 440; *Paldi* v. *Paldi,* 95 Mich. 410, 54 N. W. 903. The very essence of adverse possession is that it be in opposition to the title to which it is alleged to be adverse. *Dietrick* v. *Noel,* 42 Ohio St. 18, 21, 51 Am. Rep. 788; *Farish* v. *Coon,* 40 Cal. 33. There must be no recognition of title in another. *Roggencamp* v. *Converse,* 15 Neb. 105; *Mhoon* v. *Cain,* 77 Tex. 316. So long as the possession is consistent with the title of the real owner it is not adverse. *Morse* v. *Seibold,* 147 Ill. 318, 35 N. E. 369; *Plimpton* v. *Converse, supra.* Tested by the foregoing it would seem that Clore's user of the way on his own land was consistent with his ownership of the land. To say that his possession of both farms will not extinguish an easement *already acquired* is one thing; but to say that his user of the way on his own land, while he was tenant of Mrs. Rice, is hostile and adverse to himself and shall be computed in making up the statutory period necessary to acquire an easement by adverse possession, is another. In this respect the decision in the principal case seems questionable.

HOMICIDE—BURDEN OF PROOF WHEN INSANITY IS A DEFENSE.—Defendant was tried for murder, and convicted of manslaughter in the first degree.

On the trial evidence was offered of defendant's insanity and the defense requested the court to instruct the jury that, upon defendant's producing sufficient evidence to raise in the minds of the jury a reasonable doubt of his sanity, then the burden of proof would be upon the State to prove the sanity of the defendant beyond a reasonable doubt, the same as in establishing any other material fact necessary for conviction. The request was refused. On appeal the conviction was reversed. *Adair* v. *State* (Okl. 1911) 118 Pac. 416.

There are three rules as to the burden of proof in such a case. The first rule is: the defendant must prove insanity beyond a reasonable doubt; this rule has the support of two states, *State* v. *Pratt,* 1 Houst. Cr. Cas. 249, 268 (Delaware), and *State* v. *Spencer,* 21 N. J. L. 196 (New Jersey). The second rule is: the defendant must overcome the presumption of sanity by a preponderance of the evidence; it is often called the English rule, because still followed in that country as laid down in *M'Naghten's Case,* 10 Cl. & Fin. 200, 8 Scott (N. R.) 595; *Reg.* v. *Higginson,* 1 Car. & K. 130. This rule is also well supported in the United States, see *State* v. *Lewis,* 20 Nev. 333, 22 Pac. 241, for citation of authorities. In *State* v. *Lawrence,* 57 Me. 574, the court said "The plea of insanity is a plea of confession and avoidance." In *State* v. *Lewis, supra,* it was said "Every man is presumed to be sane. Is not this presumption as necessary as the presumption of innocence? Ought not proof to be required to rebut the one as well as the other?—the plea of insanity is so easily concocted, and facts in its support so readily manufactured by the accused." The third rule is: if any evidence is introduced tending to prove the defendant insane, the state is bound to prove and establish his sanity, like all other elements of crime, beyond a reasonable doubt. It is well supported by authorities, see *Davis* v. *U. S.,* 160 U. S. 469, in which Justice HARLAN said, "The law presumes everyone charged with crime to be sane—but this is not a conclusive presumption—to hold such presumption must absolutely control the jury until overthrown or impaired by evidence sufficient to establish the fact of insanity beyond all reasonable doubt, or to the reasonable satisfaction of the jury, is in effect to require him (defendant) to establish his innocence, by proving that he is not guilty of the crime charged." Justice HARLAN said further that the fact that the defense of insanity is frequently resorted to and sustained by evidence of ingenious experts is not an argument against the rule because such must always attend any system of punishment for crime. In *People* v. *Garbutt,* 17 Mich. 9, Judge COOLEY said, "the ingredients of the offence (murder) are; the unlawful killing, by a person of sound mind, and with malice;—the prosecution takes the burden of establishing not only the killing but also the malicious intent in every case. There is no such thing in the law as a separation of the ingredients of the offense so as to leave a part to be established by the prosecution, while as to the rest the defendant takes upon himself the burden of proving a negative." The court in the principal case says, "We believe the American doctrine (the third rule) declares the true rule on this question. It is best sustained by reason and is as well sustained by authority as the English doctrine," and cites the authorities supporting the American doctrine. The same rule was

adopted in a previous case while Oklahoma was a territory. *Mass* v. *Territory,* 10 Okl. 714, 63 Pac. 960.

INTOXICATING LIQUORS—ILLEGAL SALE—"DISPENSING."—§ 2382 Iowa Code provides, "No person by himself * * * or employee * * * shall * * * manufacture, sell, exchange, barter or dispense * * * or keep for sale any intoxicating liquors." In § 2384 it is declared that whoever shall maintain any building or place for any of the purposes prohibited in § 2382 shall be guilty of nuisance. Defendant conducted a restaurant, and, upon request by his patrons and with money provided by them, his employees, acting upon his instructions, would procure liquor from a neighboring licensed saloon and serve it in the restaurant to the patrons who had ordered it. Defendant had no interest in the sale, and derived no profit therefrom other than that which a possible increase in patronage might produce. *Held,* that conducting such a place was within the purview of the statutory prohibition as to "dispensing"; that it was a nuisance and should be abated. *Sawyer* v. *Frank* (Iowa 1911) 131 N. W. 761. Petition for rehearing denied. 132 N. W. 861.

There is a dearth of judicial construction of the word "dispense" as used in the Iowa statute, but similar prohibitory enactments have received consideration in many of the American courts; there is much conflict in the resulting adjudications. Convictions for illegal sale cannot be sustained by proof that defendant, at the request of and with money furnished by a third person, purchased liquor for and delivered it to the latter. *Bonds* v. *State,* 130 Ala. 117; *People* v. *Converse,* 157 Mich. 29; *Tate* v. *State,* 91 Miss. 382. But if the statute prohibited "furnishing" defendant is guilty under such a state of facts as above. *State* v. *Best,* 108 N. C. 747. And under a charge of "selling or dispensing" intoxicating liquors in violation of an ordinance it has been held that the giving away of whisky constituted a "dispensing." *Johnson* v. *Chattanooga,* 97 Tenn. 247. Numerous decisions support the general proposition laid down in *Bonds* v. *State, supra,* on the theory that if the person who does the actual purchasing is the agent of the buyer and derives no benefit from the transaction, he is not guilty within the terms of the common prohibitory statute. *Whitmore* v. *State,* 72 Ark. 14; *Roberson* v. *State,* 100 Ala. 37; *Davis* v. *State,* 53 Tex. Cr. 373; *Skidmore* v. *Commonwealth* (Ky.) 57 S. W. 468; *Wood* v. *Territory,* 1 Ore. 223; *Reed* v. *State,* (Okla. Crim. App.), 103 Pac. 1070. And it is held in one case that even where the defendant charged a small fee for procuring liquor, this is not evidence of a sale. The majority of the court in the principal case endeavor to distinguish it from the latter decisions on the ground that they are prosecutions for one act of infringement, while in the principal case the maintenance of a place where liquor may be had is the gist of the offense and constitutes the "dispensing." The court draws support for its theory from the cases which hold that the furnishing of liquor to members of social clubs is within the prohibitory statute. *State* v. *Easton etc. Social Club,* 73 Md. 97; *State* v. *Lockyear,* 95 N. C. 633; *Newark* v. *Essex Club,* 53 N. J. L. 99. The English courts have pronounced a rule in accord with that in the principal case. *Pasquier* v. *Neale* [1902] 2 K. B. 287. In the latter case a restaurant keeper was held